

PETITION UNDER 28 USC § 2254 FOR WRIT OF

AO 141 (Rev. 5/85)

HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District MASSACHUSETTS
Name WEI YE	Prisoner No. W65449	Case No.
Place of Confinement MCI-Norfolk, POB 43, Norfolk, MA 02056		
Name of Petitioner (include name under which convicted) WEI YE		Name of Respondent (authorized person having custody of petitioner) V. LUIS SPENCER, Superintendent, MCI-Norfolk
The Attorney General of the State of: Massachusetts		04 11590 NG
MAGISTRATE JUDGE <u>DeW</u> PETITION		
1. Name and location of court which entered the judgment of conviction under attack <u>Middlesex County</u> <u>Superior Court, Cambridge, MA</u>		
2. Date of judgment of conviction <u>10/23/1998</u>		
3. Length of sentence <u>30 years 1 day - 30 years (reduced by Appellate Division</u> <u>to 25-20)</u>		
4. Nature of offense involved (all counts) <u>Home Invasion, Armed Robbery while masked,</u> <u>3 counts of kidnapping, 3 counts of assault by means of a dangerous</u> <u>weapon, 3 counts of assault and battery.</u>		
5. What was your plea? (Check one)		
(a) Not guilty <input checked="" type="checkbox"/>		
(b) Guilty <input type="checkbox"/>		
(c) Nolo contendere <input type="checkbox"/>		
If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:		
6. If you pleaded not guilty, what kind of trial did you have? (Check one)		
(a) Jury <input checked="" type="checkbox"/>		
(b) Judge only <input type="checkbox"/>		
7. Did you testify at the trial?		
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
8. Did you appeal from the judgment of conviction?		
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		

RECEIPT # 57375
 AMOUNT \$ 5
 SUMMONS ISSUED N/A
 LOCAL RULE 4.1 1
 WAIVER FORM 1
 MCF ISSUED 10/17
 BY DPTY. CLK. 10/17
 DATE 7-16-04

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9. If you did appeal, answer the following:

- (a) Name of court Appeals Court
- (b) Result Convictions upheld
- (c) Date of result and citation, if known 52 Mass. App. Ct. 390 (08/27/2001)
- (d) Grounds raised Violation of right to remain silent under Doyle v. Ohio, 426 US 610 (1976); Fingerprint evidence was insufficient; Ineffectiveness of counsel.

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

- (1) Name of court Supreme Judicial Court
- (2) Result Denied

(3) Date of result and citation, if known 11/28/2001

(4) Grounds raised Same as above

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court None.

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court Supreme Judicial Court

(2) Nature of proceeding Petition under c. 211, §3

(3) Grounds raised Same as above.

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒(5) Result Denied(6) Date of result 04/01/2004

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc.

Yes ☒No ☐

(2) Second petition, etc.

Yes ☐No ☐(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

A. Ground one: Violation of right to silence under Doyle v. Ohio.

Supporting FACTS (state *briefly* without citing cases or law) Prosecutor asked the police officer if anyone spoke with the defendant at the police station. The police officer responded, "He didn't want to answer." No objection made by incompetent counsel. The judge gave no corrective instructions. The defendant did not testify.

B. Ground two: Violation of right to effective assistance of counsel under Strickland v. Washington.

Supporting FACTS (state *briefly* without citing cases or law) Defense counsel was a walking 6th Amendment violation. He failed to object to the above-cited violation of defendant's right to remain silent; he failed to file a motion to suppress crucial evidence prejudicial to the defendant; he failed to request an instruction of the dangers of fingerprint evidence or hire an expert to make an independent examination of the print; he failed to even make an opening statement.

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C. Ground three: _____

Supporting FACTS (state *briefly* without citing cases or law) _____

D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law) _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea Thomas F. Broderick, 8 Faneuil Hall
Marketplace, Boston, MA 02109

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- (c) At trial Thomas Broderick
- (d) At sentencing Thomas Broderick
- (e) On appeal Stephen Hrones, Hrones & Garrity, Lewis Wharf-Bay 232,
Boston, MA 02110
- (f) In any post-conviction proceeding pro se for c. 211, §3 Petition
- (g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

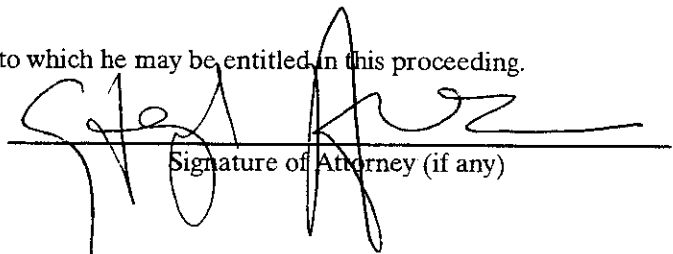
(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

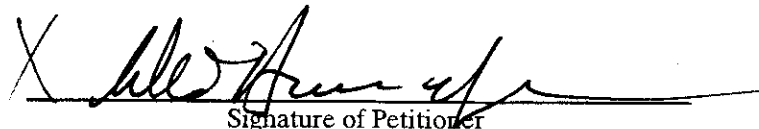
Yes ☐ No ☐

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.


Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

X June 28, 04
(date)

X 
Signature of Petitioner